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9 12th & K ST. MALL PARTNERS, LLC

10
11 UNITED STATES BANKRUPTCY COURT
12 EASTERN DISTRICT OF CALIFORNIA

13 In re:
14 12th & K ST. MALL PARTNERS, LLC
15 Debtor.

Case No.: 24-21715-C-7

Chapter 7

DEBTOR 12th & K ST. MALL
PARTNERS, LLC OPPOSITION TO
DCR MORTGAGE 10 SUB 3, LLC'S
MOTION FOR RELIEF FROM
AUTOMATIC STAY

16
17 **Date:** June 26, 2024
18 **Time:** 10:00 a.m.
19 **Location:** Courtroom 35; 6th Floor
501 I Street
Sacramento, CA
20 **Judge:** Christopher M. Klein

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22 Debtor 12th & K ST. MALL PARTNERS, LLC (hereinafter "Debtor") hereby submits
23 this Opposition to DCR MORTGAGE 10 SUB 3, LLC'S ("DCR") Motion For Relief From
24 Automatic Stay (hereinafter "Motion").

25 I.

26 INTRODUCTION

27 DCR's calculation of the amounts Debtor is in arrears on the Commercial Real
28 Estate Loan Agreement dated as of February 28, 2018 (the "Loan Agreement"), attached

as Exhibit "A" to the Declaration of Michael P. McGinn, filed in support of DCR's Motion, are simply inaccurate. Based upon the information provided herein, Debtor requests that the Court deny DCR's Motion.

II.

**DCR'S ACCOUNTING OF THE AMOUNTS DEBTOR ALLEGED OWES IS
INACCURATE**

In its Motion, DCR contends Debtor owes the following principal, interest, and post-petition costs, associated with the Subject Property:

	PREPETITION	POSTPETITION	TOTAL
Principal:	\$10,595,798.08		\$10,595,798.08
Accrued interest:	\$3,992,701.57	\$ 14,716.37	\$4,014,776.12
Late charges:	\$7,922.43		\$7,922.43
Costs (attorney's fees, foreclosure fees, other costs):	\$267,584.18	\$77,923.50	\$345,507.68
TOTAL CLAIM as of April 30, 2024	\$14,864,006.26		\$14,964,004.31

See Declaration of Michael P. McGinn, filed in support of DCR's Motion.

In its Motion, DCR contends that the last time the borrower (Debtor) made a payment was November 21, 2022, which partially satisfied the payment due on September 10, 2021. However, during Debtor's Chapter 7 Bankruptcy proceeding in the Central District of California (Case No. Case No. 2:22-bk-10061-BR), the Chapter 7 Trustee, using rental income generated from the real property located at 1020 12th Street, Sacramento, California, 95814 ("Subject Property"), provided payments to DCR. See Declaration of Robert W. Cllipinger, filed herewith. As referenced in the Operating Report, dated September 11, 2023, of David M. Goodrich, Chapter 7 Trustee in the Central District of California, Direct Capital Resources (DCR) was paid \$55,186.00 on August 15, 2023. See Chapter 7 Trustee Monthly Operating Report Pursuant to 11 U.S.C. § 704(a)(8), dated

1 September 11, 2023, attached as Exhibit "A" to the Declaration of Robert W. Clipping, 2
3 filed herewith. Another example of the Trustee Goodrich's payments is referenced in 4
5 Trustee Goodrich's Operating Report, dated January 8, 2024, which references a payment 6
7 of \$55,186.00 on December 14, 2023. See Chapter 7 Trustee Monthly Operating Report 8
9 Pursuant to 11 U.S.C. § 704(a)(8), dated January 8, 2024, attached as Exhibit "B" to the 10
11 Declaration of Robert W. Clipping, filed herewith. Thus, contrary to the representations 12
13 made by DCR's representative, Michael P. McGinn, payments were made to DCR after 14
15 November 21, 2022. 16

17 DCR seeks relief from stay to allow it to conduct a Trustee Sale of the Subject 18
19 Property. DCR's authority to conduct such a sale is pursuant to California Civil Code § 20
21 2924. Section 2294 requires DCR to provide an accurate accounting of the amounts 22
23 Debtor owes. "The obligation of the beneficiary to provide the trustor with an accurate 24
25 accounting of the amounts due to cure a default is governed by statute. Cal. Civ. Code § 26
27 2924c specifies that trustor may have the legal right to bring her account in good standing 28
by paying all of her past due payments plus permitted costs and expenses within the time
permitted by law. Cal. Civ. Code § 2924c(b)(1). Compliance with this provision necessarily
requires that the beneficiary provide accurate information in response to an inquiry by the
trustor." See *Susilo v. Wells Fargo Bank, N.A.*, 796 F. Supp. 2d 1177, 1181 (C.D. Cal.
2011). Thus, unless the amount communicated, by DCR to the Debtor, is accurate, DCR
does not have authority under California law to conduct a Trustee Sale of the Subject
Property and, as such, it is not entitled to relief from the automatic stay.

III.

CONCLUSION

24 DCR's calculations and representations of the amounts allegedly owes, pursuant 25
26 to the Loan Agreement, are simply inaccurate. As such, pursuant to California Civil Code 27
28 § 2924, DCR is not entitled to relief under 11 U.S.C. § 362(d) (1) and, thus, its Motion for
Relief From The Automatic Stay should be denied.

1 Dated: 6/12/24

LAW OFFICES OF YASHA RAHIMZADEH

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3 By: 
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6 12th & K ST. MALL PARTNERS, LLC
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